CRIMINOLOGY

HOW JUDGES THINK ABOUT RACIAL DISPARITIES: SITUATIONAL DECISION-MAKING IN THE CRIMINAL JUSTICE SYSTEM*

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Researchers have theorized how judges' decision-making may result in the disproportionate presence of Blacks and Latinos in the criminal justice system. Yet, we have little evidence about how judges make sense of these disparities and what, if anything, they do to address them. By drawing on 59 interviews with state judges in a Northeastern state, we describe, and trace the implications of, judges' understandings of racial disparities at arraignment, plea hearings, jury selection, and sentencing. Most judges in our sample attribute disparities, in part, to differential treatment by themselves and/or other criminal justice officials, whereas some judges attribute disparities only to the disparate impact of poverty and differences in offending rates. To address disparities, judges report employing two categories of strategies: noninterventionist and interventionist. Noninterventionist strategies concern only a judge's own differential treatment, whereas interventionist strategies concern other actors' possible differential treatment, as well as the disparate impact of poverty and facially neutral laws. We reveal how the use of noninterventionist strategies by most judges unintentionally reproduces disparities. Through our examination of judges' understandings of racial disparities throughout the court process, we enhance understandings of American racial inequality and theorize a situational approach to decision-making in organizational contexts.

For decades, scholars have been concerned about the disproportionate presence of racial minorities in the American criminal justice system. Although a large proportion of racial disparities can be explained by differences in criminal offending rates (Sampson and Lauritsen, 1997), many studies have found that Blacks and Latinos also are treated

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more punitively than similarly situated Whites from arrest to sentencing, net of legally relevant factors (Spohn, 2013). By relying primarily on administrative data, researchers have theorized how court officials'—in particular, judges'—implicit biases and cultural stereotypes might impact their decision-making and, consequently, reproduce racial disparities (Albonetti, 1991; Bridges, Crutchfield, and Simpson, 1987; Steffensmeier, Ulmer, and Kramer, 1998). Yet, researchers have little knowledge about how judges make sense of the social problem of racial disparities and how, if at all, they work to address the problem.

This article considers judges' subjective understandings of the causes of racial disparities in the criminal justice system, as well as the strategies judges report using to account for racial disparities in their decision-making at multiple points of the criminal court process. Through inductive analysis of in-depth, semistructured interviews with 59 judges from what we generically call "Northeast State," we reveal the social processes that judges feel constrain their decision-making at four stages of trial. We find that each judge's strategies with respect to racial disparities are determined by the situational context of each stage of trial and may not mitigate the factors that the judge believes to be the cause of racial disparities in the system more broadly. Consequently, we argue that it is not simply *judges* who should be understood as contributing to or alleviating racial disparities, but also their *situational and problem-specific strategies* should be considered in explanations of racial disparities.

Our analysis enhances explanatory models of racial disparities in criminal justice outcomes by shifting analytic and theoretical attention away from individual judges and toward the context and processes surrounding judges' decision-making at multiple stages of the court process. We discuss the implications of our situational approach to decision-making for the identification of instances in which judges may reduce racial disparities, as well as for research on decision-making in the courts and in other organizational contexts.

RACIAL DISPARITIES

Blacks and Latinos are disproportionately represented in the American criminal justice system relative to their representation in the general population (Travis, Western, and Redburn, 2014). Researchers have debated the relative weight of two primary explanations of racial disparities (Blumstein, 1982), which we refer to as disparate impact and differential treatment (Pager and Shepherd, 2008: 182). The *disparate impact explanation* suggests that, relative to the racial/ethnic composition of the population, larger proportions of Blacks and Latinos are selected into the criminal justice system either because they offend at higher rates (often attributed to racial differences in economic resources or cultural mores; Sampson and Lauritsen, 1997) and/or because they are disproportionately susceptible to the sanctions of facially neutral laws and practices (Tonry, 1995; Tonry and Melewski, 2008). The *differential treatment explanation* suggests that racial disparities arise from overt or implicit discriminatory treatment of Blacks and Latinos by law enforcers, such as police officers, prosecutors, judges, and probation officers (Beckett, Nyrop, and Pfingst, 2006; Spohn, 2013).

Although these two explanations are not mutually exclusive and findings with regard to the relative weight of each are mixed (Spohn, 2013; Tonry, 1995), recent research

employing increasingly detailed research designs and data sets has found continued evidence for the latter; that is, Blacks and Latinos are treated more punitively than Whites, net of differences in criminal offending or facially neutral legal or policy factors that disproportionately impact minorities (Spohn, 2000, 2013). At arrest, Tonry and Melewski (2008: 6) noted that Blacks are more likely to be stopped by police for legally invalid reasons, and Beckett, Nyrop, and Pfingst (2006) found that, in Seattle, police target racially diverse drug markets (rather than White drug markets) because of implicit biases about the racial makeup of drug traffickers. After arrest and before trial, Schlesinger (2005) found that Blacks and Latinos are more likely to be denied bail and detained in urban state courts and county jails across the United States, net of legal factors. Several other studies have confirmed these pretrial findings (Demuth, 2003; Kutateladze et al., 2014), and others have found evidence of differential treatment in prosecutors' decisions to reject arresting charges, net of legal factors (Spohn, Gruhl, and Welch, 1987).

Reviews of the sentencing literature have found mixed evidence for the existence of differential treatment. In his meta-analytic review of 71 studies, Mitchell (2005) showed that most studies, controlling for legal factors, found that Blacks are sentenced more harshly than similarly situated Whites but that the effect size is small. He attributed variation between studies' findings to methodological variations in study design (Crutchfield, Bridges, and Pitchford, 1994, on this point). Another review found that, net of legal factors and for Blacks as compared with Whites, a slim majority of studies have found direct race effects on the decision to incarcerate and approximately a quarter of studies have found direct race effects in sentence length (Spohn, 2000). In sum, the evidence suggests that Blacks and Latinos are treated slightly more punitively than similarly situated Whites at various stages of the criminal justice process in the United States (Spohn, 2013), although there is important variation by state, jurisdiction, and type of crime (Baldus, Pulaski, and Woodworth, 1986: 161).

ROLE OF JUDGES

Judges structure the daily routines of the court system (Eisenstein and Jacob, 1977; Feeley, 1992 [1981]) and make final determinations of admissible evidence, trial pacing, and sentencing within a system that allows for judicial discretion (Abrams, Bertrand, and Mullainathan, 2012; Banakar and Travers, 2013; Spohn, 2009). Observed disparities at sentencing that cannot be explained by legal or other nonracial factors have largely been understood to be the result of judges' differential racial treatment (Spohn, 2000). Although differential treatment at sentencing may also emanate from other court officials' decisions, given the preponderance of plea deals and modes of conviction other than trials (Johnson, 2003), judges oversee every stage of court processing, regardless of mode of conviction (Spohn, 2009).

To explain judges' observed harsher treatment of minorities, researchers have drawn on legal and social psychological theories of decision-making (Farrell and Holmes, 1991), as well as on the "focal concerns" perspective. The focal concerns perspective, which was developed in relation to data on court officials in Pennsylvania (Steffensmeier and Demuth, 2001; Steffensmeier, Kramer, and Streifel, 1993; Steffensmeier, Ulmer, and Kramer, 1998) and elsewhere, argues that judges' primary considerations when making sentencing decisions are the blameworthiness of the defendant, community safety,

and practical concerns, such as organizational constraints or the health status of the defendant. Sentencing decisions based on these concerns can be colored by judges' stereotypes of minorities (Bishop and Frazier, 1996; Bridges, Crutchfield, and Simpson, 1987), which relate to, for example, defendants' educational attainment and other biographical factors that judges use to help determine blameworthiness and which activate in situations in which judges must make decisions with limited information. Similarly, research on uncertainty avoidance in decision-making has argued that judges, intending to be rational actors but operating with limited information, attempt to reduce uncertainty by developing "patterned responses" based on habit and stereotypes about certain defendants' future criminality (Albonetti, 1991; Farrell and Holmes, 1991). More recently, psychological research, through the administration of implicit bias tests and hypothetical vignettes to practicing judges, has linked judges' implicit biases to their sentencing of hypothetical defendants (Rachlinski et al., 2009).

Although researchers have shown how judges' biases and susceptibilities to broader cultural schemas can shape the construction of blameworthiness (Harris, 2008, 2009) and impact defendants' sentencing outcomes (Ulmer, 1997), little is known about judges' interpretations of racial disparities as a social problem. Largely missing is research on how judges think about racial disparities (as opposed to the degree to which they espouse implicit or explicit racial stereotypes),[1] the extent to which they consider such disparities when making decisions regarding individual cases at various stages of trial, and any strategies they have for managing disparities. Data on judges' interpretations would improve our understanding of their role in the reproduction of racial disparities. This is especially true given that explicit racist attitudes and stereotypes are now rarely expressed, making it necessary to identify alternative explanations for the persistence of racial inequality (Clair and Denis, 2015). Furthermore, instead of focusing almost exclusively on the sentencing stage as prior research has done, it is important to consider judges' understandings of racial disparities at each stage of the criminal trial process (Kutateladze et al., 2014) at which their decisions, either directly or indirectly, impact criminal defendants' outcomes. These limitations of extant research, we will show, leave researchers blind to the complexity of the social processes underlying decision-making in the criminal justice system.

SITUATIONAL DECISION-MAKING IN THE CRIMINAL JUSTICE SYSTEM

Scholars of court official decision-making have called for more research on the mechanisms and processes underlying court outcomes (Harris, 2009: 254; Ulmer, 2012: 30–3), specifically with respect to race (Baumer, 2013). Informed by theoretical insights into the centrality of social actors' interpretations in the production of social processes (Glaeser, 2014; Lamont, Beljean, and Clair, 2014), this article argues for a situational approach

1. But see Kramer and Steffensmeier (1993) who provided several quotations from judges about why they believe racial disparities exist despite sentencing guidelines, and see Bridges, Crutchfield, and Simpson (1987) who provided a few quotations about racial disparities from one prosecutor, one judge, and one police chief. Although these data are illuminating, they do not provide in-depth insight into contemporary judges' interpretations of racial disparities, nor their understandings of disparities at stages of trial prior to sentencing.

to decision-making within the criminal justice system and, by extension, within organizational contexts more broadly. Our situational approach complements the focal concerns and uncertainty avoidance perspectives by acknowledging the potential existence of stereotypes and bias in judicial decision-making. But we add to these perspectives by focusing on court officials' interpretations of the situational context and processes that constrain their decision-making, despite their individual-level beliefs, motivations, and stereotypes.

Decision-making among court officials results from a collective process, whereby the choices of prosecutors and defense attorneys are mutually constitutive and influence judicial decision-making (Eisenstein and Jacob, 1977; Klepper, Nagin, and Tierney, 1983; Ulmer, 1997). Moreover, local political and organizational cultures within the courts and the larger criminal justice system differentially structure decision-making (Eisenstein, Flemming, and Nardulli, 1988; Johnson, 2006; Peterson and Hagan, 1984). Following Feeley (1992 [1981]), we consider the court to be an organization embedded within a larger environment of laws, policies, and other legal and crime-managing organizations, including police departments, probation departments, and prisons. Consequently, decision-making in the courts is a complex process in which the intersubjectivity of social action (Glaeser, 2014; Lamont, Beljean, and Clair, 2014), the probabilistic nature of causal relationships (Ragin, 2008), and considerations of the time order of decision-making (Abbott, 1992) complicate straightforward, variable-centered interpretations of decision-making.

More specifically, as we reveal, judges face overlapping but varying sets of constraints at each stage of the court process, such as the legal considerations surrounding a judge's interaction with a prosecutor during arraignment or the courtroom norms surrounding jury selection. And judges' decisions at each stage impact criminal defendants' outcomes through different processes, ultimately concatenating into the differential sorting of defendants through the system. For example, a judge's sentencing decision may be influenced, in part, by factors that arise along earlier stages of the criminal justice process, such as a defendant's ability to abide by conditions of pretrial release set by a different judge. Our situational approach, therefore, also extends the focal concerns and uncertainty avoidance perspectives by moving beyond the current emphasis on sentencing and revealing the implications of judges' decision-making at other moments of criminal justice processing. In this article, we consider how judges understand and deal with racial disparities in four specific situations—arraignment, plea hearings, jury selection, and sentencing.

Hence, we move from an abstracted view of judicial decision-making, which considers judges as stable actors making general and consistent decisions,[2] to a situational view of judicial decision-making, in which judges make problem-specific decisions in particular contexts (Abbott, 1997; Ragin, 2008). By elaborating the interpretive constraints that judges face along the course of the court process, the situational approach to decision-making enhances explanations of the reproduction of racial disparities in the criminal justice system.

2. Theories of judicial decision-making generally interpret judges as actors with coherent judicial beliefs that structure their decisions in consistent ways (Conley and O'Barr, 1987; Ungs and Baas, 1972). For example, with respect to judges' differential treatment of minorities, researchers have characterized judges as either biased or not (Rachlinski et al., 2009) or as stereotyping or not (Steffensmeier, Ulmer, and Kramer, 1998).

RESEARCH DESIGN

Our data consist of semistructured interviews with state-level court officials and observations in state-level courthouses in what we refer to generically as "Northeast State,"[3] where Blacks and Latinos are disproportionately incarcerated at approximately 4.0 and 2.5 times, respectively, their representation in the population. Part of a larger project on state court processes, the data analyzed in this article were collected from December 2013 to March 2015.

NORTHEAST STATE COURT

We focus our analysis on Northeast State's "Upper" and "Lower" courts, the state's two major court systems, which have jurisdiction over most state-level criminal cases. Presided over by several hundred governor-appointed judges,[4] these courts address criminal matters from misdemeanors, operating under the influence, and drug possession charges (Lower Court) to felonies, such as murder or drug trafficking (Upper Court).

The Lower Court and Upper Court each contain many courthouses throughout the state. Lower Court judges often "ride the circuit," serving in a different courthouse week-to-week or even day-to-day depending on the flow of cases. Upper Court judges move around as well, but usually they stay in a courthouse for months at a time. There are fewer Upper Court courthouses than Lower Court courthouses as Upper Court courthouses have jurisdiction over larger areas of the state and preside over fewer cases.

Over the course of the study, we conducted more than 20 half-days of fieldwork in one Lower Court courthouse and one Upper Court courthouse in the capital city of Northeast State. We observed arraignments, pretrial motions, plea hearings, jury selections, jury trials, bench trials, and parole hearings. In addition, we had several meetings with administrators of Northeast State Court. We used these observations and meetings to inform our interviews and vice versa. Observations helped us clarify terms and understand the stages of the court process that were referred to in interviews. We used observations to revise our interview guides, as well as to lend legitimacy to our questioning during the interviews. When we did not fully understand processes expressed in an interview, we sought to observe them during fieldwork.

INTERVIEWS

This article focuses on interviews conducted with 59 judges, supplemented by interviews with state prosecutors and defenders, whose voices help to clarify the social processes and situational contexts of judges' decision-making. We selected our sample of judges with the aim of maximizing variation (Weiss, 1994) in the social demographic categories—e.g., race, gender, and professional background—that existing literature has found relevant for explaining judges' varying philosophies and views of defendants (Spohn, 2009), as well as observed decisions (Johnson, 2006). We recruited judges by e-mailing and/or calling all judges in the Upper Court until either

3. Names of individuals, organizations, and locations have been changed to protect the confidentiality of our respondents.
4. To maintain the confidentiality of Northeast State, we do not provide the state's exact numbers of judges.

we received a (positive or negative) response or the timeframe for our data collection passed. We recruited Lower Court judges through a combination of purposive and snowball sampling. This snowball sampling resulted in interviews with six judges in courts other than the Upper and Lower courts (e.g., juvenile or federal courts).[5] Given the preponderance of White, male, and Democrat-appointed judges in Northeast State, we aimed to oversample minority judges, female judges, and Republican-appointed judges. We continued recruiting and interviewing respondents until we reached saturation and no longer obtained novel information in our interviews (Small, 2009). In total, we attempted to recruit 165 judges, resulting in a response rate of 36 percent. Based on demographic information available to us on Northeast State's judges, we estimate that our sample includes a greater proportion of minorities[6] and a similar proportion of women relative to the state's population of judges. Although our sample does not allow us to make distributional claims, it is well suited for documenting the range of judges' thoughts and experiences.

Table 1 shows the background characteristics of the judges we interviewed. Although we interviewed 59 judges, our interview questions evolved at the beginning of the study, and so our first interviews did not include as much information on judges' understandings of, and strategies for dealing with, racial disparities. Consequently, we restrict our sample to 55 judges in our analysis of judges' explanations about the causes of racial disparities and to 48 judges in our analysis of judges' reported strategies for dealing with racial disparities.

Interviews averaged between 60 and 100 minutes. Several interviews were conducted over the phone, but most were conducted in-person, affording us the opportunity to travel to courthouses throughout the state. We listened to each other's interviews at various phases of data collection and regularly discussed our interview strategies to ensure consistent interviewing techniques.

The interviews first covered judges' approaches to, and decision-making strategies at, arraignment and bail hearings, plea hearings, jury selection, and post-trial sentencing. We did not mention racial disparities during these parts of the interview, but if a respondent broached the topic, we asked follow-up questions accordingly. Toward the end of the interview, we introduced the topic of racial disparities by asking, "Are you aware of studies that have shown disparate sentencing by race?" As with racial disparities in the criminal justice system more broadly, "disparate sentencing by race" could arise from differential treatment and/or disparate impact. When asked by respondents to elaborate, we defined racial disparities as the disproportionate presence of Blacks and Latinos in the criminal justice system relative to their representation in the population, affording respondents the opportunity to express whether such disparities arise from differential

5. Although the types and flow of cases in the other courts are different from those in the Lower and Upper courts, we believe that our questions about racial disparities in the criminal justice system have wider applicability to all judges in our sample, regardless of the courts in which they work. The range of strategies we document regarding racial disparities exists within each level of the court system. The nature and implementation of these strategies varies across levels of the court system, and we take care, in our findings, to highlight how and when such variation comes about.

6. This oversampling does not bear on the findings in this article given our goal of documenting judges' range of beliefs and our focus on situational decision-making strategies. Examining potential relationships between our findings and judges' background characteristics is an interesting avenue for future research.

Table 1. Interview Sample of Judges in Northeast State Court, by Background Characteristics

Background Characteristic	Full Sample ($N = 59$)	Explanations Sample ($N = 55$)	Strategies Sample ($N = 48$)
Race			
White	42	38	31
Black	10	10	10
Other	7	7	7
Gender			
Male	38	36	31
Female	21	19	17
Court Affiliation			
Upper	35	32	28
Lower	18	18	16
Other	6	5	4
Political Party of Appointing Governor			
Democrat	40	39	32
Republican	19	16	16
Prior Occupational Experience			
State prosecutor only	18	16	14
State defender only	13	11	9
State prosecutor and state defender	2	2	2
Federal prosecutor (and no state experience)	12	12	12
Private attorney (and no state experience)	13	13	10
Unknown	1	1	1

treatment and/or disparate impact. We then asked respondents whether they have strategies for dealing with disparities: "Do you ever think about disparities when ruling on individual cases?" Next, we asked whether they think about disparities when making decisions at stages of trial prior to sentencing. Throughout this portion of the interview, when appropriate, we probed respondents to explain whether they believe racial disparities are a problem, what they believe to be the cause of disparities, and their interpretations of their abilities to address racial disparities in different situations. Finally, we concluded the interview by asking respondents whether "you feel that your racial or ethnic identity is ever relevant to your role as a judge," followed by a series of probing questions, including whether they believe their identity "ever factors into your decision-making." This final set of questions elicited more details about each judge's strategies for dealing with racial disparities, as well as their interpretations of their social backgrounds and potential racial biases.

In the interview context, most judges were willing to talk about race,[7] whereas a small number were more guarded. Judges who were more guarded expressed the same range of understandings and strategies as the others, although often in slightly less lively language. Compared with survey research, in-depth interviews allowed us to establish rapport with our respondents through face-to-face interaction (Pager and Quillian, 2005: 373) and gain

7. For interviews with judges, we matched by race—the first author, a Black male, interviewed Black and Latino/a respondents, whereas the second author, a White female, interviewed White respondents. Each author interviewed relatively equal numbers of Asian and American Indian respondents. However, we also conducted several cross-race interviews to test for interviewer effects (May, 2014). We did not find meaningful or consistent evidence to suggest that the interviewer's race or interview style affected judges' responses.

in-depth knowledge about their decision-making processes. Although we did not observe the decision-making of every judge we interviewed, this analysis endeavored to uncover what judges believe to be legitimate strategies for dealing with racial disparities. Interviews are ideal for these purposes (Pugh, 2013).

ANALYSIS

Each author coded the other author's interview transcripts. By coding each other's interviews, we gained a collective understanding of themes as they emerged (Suddaby, 2006). We also read and coded several interview transcripts together. Our coding scheme emerged inductively. When we disagreed, we interrogated one another's assumptions and interpretations of the data and came to a consensus about how best to code a particular construct (Weston et al., 2001). After developing a coding scheme, we coded the interview transcripts as follows. First, we read each transcript in its entirety. Second, we coded judges' explanations of racial disparities. Third, we coded whether (and, if so, how) judges reported taking such disparities into account at particular stages of trial, focusing on judges' accounts of what constrains their decision-making. Fourth, we coded other instances in the interviews in which judges mentioned race, racial disparities, or strategies to deal with such disparities.

JUDGES' EXPLANATIONS OF RACIAL DISPARITIES

When asked whether they were aware of studies that have shown racial disparities in sentencing, nearly all of the judges we interviewed acknowledged, and expressed concern about, the existence of racial disparities. When probed, judges relied on differential treatment (i.e., discriminatory treatment by court officials or police officers) and disparate impact (i.e., differential rates of criminal offending as a result of poverty or family dysfunction or the disparate effects of facially neutral laws) explanations of racial disparities. In line with prior research on lay attributions of racial inequality more broadly (Thompson and Bobo, 2011: 17–20), most judges in our sample (42 of 55, 76 percent) provided an explanation that included a combination of differential treatment and disparate impact. A nontrivial number of the judges in our sample (13 of 55, 24 percent), however, attributed racial disparities to disparate impact alone.

Some judges who offered differential treatment explanations locate the court within a broader discriminatory society. Judge 35, a White male, attributes the existence of racial disparities to what he refers to as institutional racism. He told us that "racism permeates everything" in the United States and, thus, in the courts as well. When probed further, Judge 35 clarified that the racism he identifies is not "overt, purposeful discrimination" but racial bias that "affects everyone's perceptions." Judge 133, a minority male, similarly noted that discrimination "permeates the entire system," affecting the treatment not just of criminal defendants but also of minority court officials by their White peers.

Judges who offer differential treatment explanations often note other officials' differential enforcement of policies and informal practices, which subsequently affect judges' decisions. Judge 76, for example, criticized mandatory minimum sentencing laws that, in effect, "take the power away from the judge and leaves it with the prosecuting attorneys," whose decisions about what charges to bring and willingness to break down charges

constrain a judge's sentencing. Judge 34 similarly argued that disparities arise "because Black people are treated unfairly" by "minimum mandatory sentences." Some judges further argued that certain laws, especially drug laws, are overenforced in majority–minority neighborhoods (e.g., Judge 66). Drug laws, though, were also framed as contributing to racial disparities through disparate impact, not just differential treatment in police enforcement. For example, Judge 65 noted how the policy of seeking higher sentences for drug infractions committed near school zones disproportionately impacts urban communities, which have larger minority populations and fewer areas outside of school zones. Finally, other judges noted how the informal practices of other court officials could result in differential treatment. For example, Judge 134 noted that prosecutors, during bail hearings, sometimes ask for higher bail amounts for "Latino or Chicano" defendants because their surnames sometimes appear differently in different documents. Prosecutors assume that these defendants are using aliases and thus pose a greater flight risk, but the judge told us that it is more likely that these defendants sometimes use "the last name of their mother, which is a cultural difference" rather than an attempt to disguise their identity.

Surprisingly, many judges in our sample acknowledged the possibility that their own implicit and explicit biases contribute to racial disparities. Judge 63, a White male, told us that he often reads articles in *The New York Times* about racial disparities, which remind him that he must "be self-aware" and remember that "we're all vulnerable to prejudice." Judge 35 remarked that he must be "conscious of it." Even judges from racial minority groups recounted their own susceptibility to bias against minorities. Judge 121, a minority female, chatted with us after the interview about a conference she attended on implicit bias, where she learned that even minorities can have implicit biases against their own group. Indeed, these judges' understandings of implicit bias are likely related to the continuing judicial education provided in Northeast State, which more than one judge referenced as a site where they were introduced to the concept and had "helpful and very healthy" discussions about "where those hidden biases may lie" (Judge 124). These interviews confirm evidence from psychological literature on implicit bias among judges (Rachlinksi et al., 2009) and extend this literature by revealing that some judges are conscious of their biases even if they function unconsciously.

As noted earlier, in a world of limited information, judges' considerations may rely on extralegal factors—such as race or socioeconomic status—that, in their minds, are associated with legal factors or rehabilitative goals (Steffensmeier, Kramer, and Streifel, 1993). Our data reveal that this process can have negative implications for minority defendants even when judges search for more lenient sentencing alternatives. For example, Judge 53 told us that drug treatment alternatives are often more available to Whites than minorities because of socioeconomic constraints faced by minorities. He recounted:

> If the person comes from a family with money, they say we have enough money and there's a program in [a Western state]—and this was a case I had—a residential program in [the Western state] where he can go for 3 months and get serious drug treatment. And I said that sounds fine. But I get a similar person with a similar situation who happens to be Black and the chances that they have a family who can send them to [the Western state] is zero. … So what do you do? Go home with a guilty conscience? Unfortunately, there are generally more resources available to people who are not minorities and that creates a real problem for the sentence.

Similarly, because judges operate with limited information about a defendant, they may make decisions based on stereotypical assumptions about the likelihood of the average Black defendant or the average White defendant being able to comply with alternative sentencing. For example, in thinking about racial disparities, Judge 131 told us, "there are different programs that are available that may be more suitable for a White juvenile or a White adolescent than a Black adolescent." The judge went on to describe an instance when he sentenced a young Black man to probation rather than to jail time. The individual ultimately violated the conditions of his probation, which the judge attributed to his neighborhood and school environments. As the judge concluded, "Didn't work. But I tried!"

As noted, a considerable minority of judges in our sample (13) believe that racial disparities are a problem of disparate impact alone. Several of these judges question the role of judges in contributing to racial disparities and do not believe themselves or their colleagues to be biased. For example, Judge 80, a White male, believed that studies that have revealed racial disparities resulting from differential treatment could be "dead wrong." He cited the example of a colleague who had been criticized in the media for being a differential sentencer:

> The [*Northeast Capital News*] was doing a study for an article and it was published on judicial sentences based upon race, and they found that, statistically, [this judge] hit Black people harder than White people. And [the judge] was devastated because there was not a racist bone in his body, and we all knew it. … And I thought the only explanation that I could give that it must have been that those people, that particular group of people, had committed more serious crimes because [this judge] just didn't have it in him to do that. … so ever since then I have been very skeptical about studies like that because I had seen first-hand how a study was dead wrong on that point.

As the latter half of this quotation details, Judge 80 does not blame racial differences in outcomes on differential treatment but on disparate types of offending among "particular group[s] of people."

Judge 101, a White female, attributes racial disparities to higher rates of drug use among minorities (which research has found is a criminal activity where offending rates between groups are equal; Bobo and Thompson, 2006). Moreover, Judge 101 does not find racial disparities in the criminal justice system to be problematic given her belief that drugs damage individuals and communities. For her, strict drug laws are "a protection policy," not "a racist policy." Indeed, she criticized "theoretical liberal White thinkers" who find racial differences in conviction rates to be inherently problematic as, unlike these White thinkers, she has "spent time with Black and Haitian people" who are "entitled to [the] protection" of drug laws. Judge 101's interpretation of drug laws and of the policy preferences of Blacks she has "spent time with" echo the once widely held belief that punitive drug laws (despite resultant disparities) protect majority–minority communities (Fortner, 2015).

For some judges, racial disparities are an epiphenomenon not just of protecting minority communities but also of protecting minority defendants, who, if not held in custody, might not survive. For example, when describing her decisions to detain defendants pretrial, Judge 128, a minority female, told us: "I am thinking if I let this kid

go back into the community, the kid's coming back in a body bag." Later, when talking about racial disparities in sentencing, she lamented: "I'm aware of the statistics and I'm fully aware that I contribute to the statistics, but sometimes we aren't given too many choices."

Finally, one judge we interviewed posited that some minorities have a cultural attraction to being part of the system as if it were a badge of honor. Judge 121, a minority female who generally believes that racial disparities are a function of differential treatment within the court system, told us: "[T]here seems to be almost like a self-fulfilling prophecy for a lot of young Black men … that it is OK to go to [jail], that it is a badge of honor. … Sometimes they want to go because that's where their best friend is." Some sociological accounts of inner-city life lend evidence to support such an affinity to delinquent behavior among young minority men (Anderson, 1999), given the concentrated disadvantage of their neighborhoods.

In sum, judges' beliefs about the causes of racial disparities fall into two broad categories—beliefs that attribute blame to the court system and criminal justice officials (differential treatment); and beliefs that attribute blame to criminal offenders, poverty, and problems that arise prior to contact with the criminal justice system (disparate impact).

JUDGES' STRATEGIES FOR DEALING WITH RACIAL DISPARITIES

Judges recount different strategies for dealing with racial disparities—strategies that manifest at particular stages of the court process, that are considered by each judge to be appropriate at that stage, and that have different implications for the reproduction of racial disparities in the criminal justice system. These strategies are, therefore, best understood as stage-specific decisions in relation to problems encountered at particular points of the criminal justice process. These strategies are structured by judges' general understandings of racial disparities, as well as by what judges believe to be legitimate or possible conduct in particular situations.

We inductively identified two broad categories of strategies that judges report for dealing with racial disparities—*noninterventionist* and *interventionist*. *Noninterventionist strategies* defer to other actors (e.g., prosecutors and defenders) in decision-making. This usually involves judges considering their personal differential treatment of defendants but not addressing possible differential treatment by other actors or the disparate impact of their own decisions or of the process as a whole. *Interventionist strategies* contest other actors in decision-making. This usually involves judges not only considering their own differential treatment of defendants but also questioning the possible differential treatment of other actors, as well as (sometimes) addressing the disparate impact of their own decisions and of the process as a whole. By using these criteria, we categorized judges' strategies as noninterventionist or interventionist regardless of judges' stated motivations behind, or views on the implications of, a given strategy.

The two categories of noninterventionist and interventionist strategies mirror, in some sense, classic interpretations of different judicial philosophies. For example, Glick and Vines (1969) differentiated between judges who are "law-interpreters" and those who are "law-makers," attributing different courses of action to each type of judge. The key difference is that we do not consider *judges* to be noninterventionist or interventionist;

Table 2. Noninterventionist and Interventionist Strategies, by Stage of the Court Process

Stage	Noninterventionist	Interventionist
Arraignment	Defer to charges and bail requests brought by prosecutor and police department	Question prosecutor's charging decision on basis of racial disparity; consider broader racial patterns and possible biases of both attorneys when setting bail
Plea Hearing	Accept most deals agreed on by both sides	Reject deals deemed unfair or racially disparate, even if agreed-on by both sides
Jury Selection and Management	Any impartial juror will do; foreperson selected randomly or chosen for attentiveness and/or leadership skills	Active attention to empaneling a diverse jury; active monitoring of peremptory challenges; foreperson should be the same race as the defendant
Sentencing	Strive for consistent sentencing within one's caseload (internal consistency)	Strive for consistent sentencing within the full criminal justice system (external consistency); consider minority/low-income status as a mitigating factor

Table 3. Number of Judges Employing Each Strategy Category, by Stage

Strategy	Arraignment ($N = 48$)	Plea Hearing ($N = 48$)	Jury Selection ($N = 48$)	Sentencing ($N = 48$)
Interventionist	12	7	13	7
Noninterventionist	36	41	35	41

rather, we consider the *stage-specific strategies they employ* to be noninterventionist or interventionist. This distinction is important as individual judges exhibit variation with respect to which category of strategies they employ.

As we will discuss, each strategy category becomes instantiated at different stages of trial into particular lines of action (table 2). And each line of action has different consequences with respect to the differential treatment of and/or disparate impact on minority defendants. A central finding of this article is that noninterventionist strategies, which do not deal with possible differential treatment by other actors or the disparate impact of the criminal justice system, are employed most often at each stage by the judges in our sample (table 3). Judges' reliance on noninterventionist strategies occurs despite the fact that most judges in our sample believe that differential treatment by not just themselves but also by other actors is one central cause of racial disparities. Consequently, judges' noninterventionist strategies—not just their attributions or implicit biases—help to explain the reproduction of racial disparities.

ARRAIGNMENT

At arraignment in Northeast State, a defendant is formally charged before the court and his or her pretrial status—detainment with bail or release on one's personal recognizance, sometimes with conditions—is determined. A noninterventionist strategy defers to prosecutors' charges and to both prosecutors' and defense attorneys' recommendations in setting bail. An interventionist strategy, however, questions the potential biases of prosecutors and defense attorneys and considers broader racial/ethnic patterns in how defendants are charged and/or released pretrial, addressing differential treatment.

Most judges in our sample (36 of 48, 75 percent) employ a noninterventionist strategy with respect to racial disparities at arraignment. Although only 12 judges employ an interventionist strategy at this stage, this number is higher than the number of judges who employ interventionist strategies at plea hearings or at post-trial sentencing (table 3).

Arraignment is a quick process, particularly in the Lower Court, where a judge may handle scores of cases in one day. In this context, rarely do judges have the time or information to explore the nuances of a case or the particular circumstances of a defendant. Therefore, one reason most judges in our sample employ a noninterventionist strategy at this stage is because they believe that prosecutors and defense attorneys have more information about a case than they do. Judge 93 offers an archetypical example of how most of the judges we interviewed think through bail decisions during arraignment sessions. He characterizes this stage of the court process as one of the "toughest" because "you really don't know a lot about the case so you have to consider as much information as you have in front of you and, um, do your best." Thus, he pays close attention to prosecutors' arguments and the information they present. Similarly, Judge 34 told us that the charging decision is within the "purview" of the state prosecutor and that if she "weighed in," she would be "out of line."

A judge's deference to prosecutors at arraignment allows for prosecutors' (and police officers') potential differential treatment of defendants to structure both defendants' initial charges and defendants' pretrial outcomes—both of which have implications for sentencing. Studies have found that prosecutors often take extralegal factors, such as a victim's willingness to testify or the race/ethnicity of the defendant or victim, into account in their charging decisions (Spohn, Gruhl, and Welch, 1987). Moreover, prosecutors often rely on police officers' interpretations of the crime committed. Prosecutor 127 told us that charges brought in the Lower Court emanate from police departments and that prosecutors rarely put in the time to decide whether a charge has sufficient merit before the arraignment session.

As noted, 12 judges in our sample employ an interventionist strategy at arraignment. These judges actively question the charges prosecutors bring and/or their arguments for pretrial bail. For example, Judge 65 recalled an incident in an arraignment session when a Black man and a White man had both been arrested for alcohol violations. The prosecutor argued to have the Black defendant arraigned and the White defendant's case dismissed "because he was going to counseling to get treatment for his alcohol addiction." Judge 65 took the prosecutor to task in her lobby, telling her that she "looked like a bigot" even if she did not intend to treat the defendants differentially. Similarly, Judge 103 relayed that he and a group of fellow judges noticed a pattern of differential treatment in the charges prosecutors were bringing for similar behavior "a few years back:" "[A]ll the Black folks and Puerto Rican folks are coming in charged with felony larceny and the White folks are coming with just shoplifting," a less serious charge. In response, "one of our colleagues went out of line and said, 'no, I'm not going to let this happen.' … [and] it changed for a while." When asked whether he believes that charging differences are still present in the courts, Judge 103 responded, "Oh, yes! Sometimes you have to ask, 'why is this?'" Finally, Judge 138, an Upper Court judge, noted that, when reviewing bails set by Lower Court judges, she will often adjust the bail amount to "even it out so that people [from different racial/ethnic groups] are treated equally." Through an interventionist strategy at arraignment, judges seek to counter potential differential treatment by prosecutors and police officers.

PLEA HEARING

At a plea hearing in Northeast State, the defendant—often after negotiations between the defense attorney and the prosecutor and, in some instances, input from the judge—appears before the judge intending to plead guilty. When there is no preexisting agreement, judges consider the sentencing recommendations of the prosecutor and the defense attorney and then issue their own sentence, which the defendant can choose either to accept or to reject and proceed to trial. When a plea bargain has already been agreed on, judges have the option of accepting the agreement or rejecting it and offering their own sentence. Our analysis at this stage considers judges' decision-making with respect to the latter—agreed-on pleas. When pleas are not agreed on, judges' decision-making strategies at this stage are analogous to their strategies at post-trial sentencing, which we will discuss shortly. We should note, however, that when pleas are not agreed on, nearly every judge in our sample attests that they make a sentencing decision that falls somewhere in between the recommendations of the prosecution and the defense, a phenomenon known as anchoring (Enough and Mussweiler, 2001). Such a decision does not consider the disparate impact or potential differential treatment of prosecutors and of defense attorneys in forming their recommendations.

When plea bargains are agreed on, a noninterventionist strategy defers to the deals reached by the prosecution and the defense. An interventionist strategy might reject an agreed-on plea on the grounds that the disposition for the minority defendant in question differs from those typical of White defendants facing similar charges and with similar criminal records, addressing differential treatment. Although 25 percent of the judges in our sample (12 of 48) employ an interventionist strategy at arraignment, just 15 percent of the judges in our sample (7 of 48) employ an interventionist strategy at the plea stage.

Indeed, it is rare for judges in our sample to reject a plea deal that has been agreed on. As Judge 88 remarked, "I would say very rarely would a judge reject the plea and the reason is that, you know, the lawyers know the case better than anybody." In our interviews, we asked judges, explicitly, if they ever reject an agreed-on plea deal, and the majority could not recount an instance. Judge 145 noted, "when counsel comes to me with an agreement, it's carefully crafted, it's well thought out … the ball is really in the prosecutor's court because it's their decision—not my decision—whether they're going to agree to accept a plea." Consequently, defendants who plead guilty in front of judges employing a noninterventionist strategy at the plea stage are subject to the potential biases and differential treatment of prosecutors and of defense attorneys.

Even though defense attorneys are to be unrelenting advocates for their clients, their advocacy could still result in differential treatment. Research has found that defense attorneys exhibit implicit racial biases against Blacks and Latinos similar to those of the general population (Eisenberg and Johnson, 2003). Indeed, Public Defender 111 told us that, after auditing his own caseload of approximately 120 prior cases, he found that he had written special disposition memos more often for White defendants than for the "80 percent of my clients [who] were Black or Hispanic." Moreover, a lack of information about a minority defendant, given a language barrier or a misunderstanding of the background of the defendant, could result in poor advocacy. For example, Public Defender 125 expressed frustration at how difficult it is to get to know his clients who speak other languages even when interpreters are available: "I do generally feel like I can connect, you know, reasonably well with clients of a different race who speak English. But clients

who don't speak English I think is where I tend to struggle." If information is central to the appropriate disposition of a case, then a defense attorney's lack of information or cultural misinterpretations could result in inadequate advocacy.

As noted, seven judges in our sample employ an interventionist strategy at the plea hearing. Judge 66, a minority male, told us that he often rejects agreed-on plea deals when he believes a defendant—more often than not a "person of color"—is being treated unfairly. In particular, he noted that he determines what constitutes a fair plea deal by comparing the disposition before him with those of other similar cases:

> They are situations where I've seen similar cases disposed of in less, um, disposed of in a way that is more favorable to the offender. So I don't see why in some cases, because perhaps the offender is a non-minority, they get their case dismissed with some type of probation or some community service, and now virtually the same type of fact or same level of offense, I see a minority person get a guilty plea and probation. I'm not doing it. So we'll figure out some other way to dispose of the case. Whether the defense attorney agrees or not is of no meaning to me. … So I try to even the playing field a little bit on my watch.

Judge 66 characterizes his rejection of an unfair plea deal as "leveling the playing field" between minorities and Whites and, with this strategy, is addressing differential treatment.

Similarly, Judge 121, a minority female, recounted keeping a folder on cases heard in front of her as evidence of differential plea deal dispositions. At one point, she criticized a prosecutor on record and in open court for what she saw as differential treatment of Black male defendants. She recalled that she "kept seeing young Black men being charged" and "young White men [and women] with [the same] charge, but with more lenient dispositions." She recounted that she was accused of being a "reverse racist" for rejecting plea deals for White women that she found to be too lenient in comparison with those of Black men.

Both Judge 66 and Judge 121 employ interventionist strategies at the plea stage but with different implications. Whereas Judge 66 rejects agreed-on pleas of minorities and provides alternative dispositions that are more in line with their White peers, Judge 121 rejects agreed-on pleas of Whites and elaborates alternative dispositions that are more in line with what is being handed down to their Black peers. Thus, in an effort to equalize outcomes between minorities and Whites, judges can either be harsher on White defendants or more lenient toward minorities.

JURY SELECTION

When cases reach jury trials, judges oversee the selection and management of jurors, ensuring that empaneled jurors are fair and impartial and that attorneys do not inappropriately exclude certain jurors on the basis of race, ethnicity, or gender. During the jury selection process, jurors are not so much *selected* as they are *removed* from the jury pool one-by-one as necessary in the order in which they appear. Therefore, judges have relatively little control over the racial/ethnic composition of juries. In Northeast State, judges are also legislatively mandated to choose the jury's foreperson, the juror

tasked with managing the deliberation process. Although forepersons have no greater legal authority than other jurors, studies have found that forepersons are perceived by other jurors to be more influential in the deliberation process (York and Cornwell, 2006).

Juries' racial compositions can impact the verdicts they deliver for minority defendants, not only because minority jurors might be more likely to be sensitive to the circumstances of minority defendants (Sommers and Ellsworth, 2003), but also because the mere presence of minorities on a jury can positively influence White jurors' leniency toward Black defendants and their willingness to discuss racism during deliberations (Sommers, 2006). As minorities comprise relatively small percentages of most jury pools in Northeast State, especially outside of major cities, minority defendants are disparately impacted if potential minority jurors are not empaneled. This has implications not only for minority defendants' trial outcomes but also for attorneys' and defendants' decisions regarding whether to bring a case to trial or to accept a plea deal. Public Defender 62 told us that the juries in one county in Northeast State tend to be all White, whereas those in another county tend to include minorities. And "that makes a difference for what your case is, how you present it … and is it a case that's going to appeal to jurors? How are they going to view this?"

At the jury selection stage, a noninterventionist strategy is one in which the judge simply focuses on removing jurors who are believed unable to be fair and impartial and forfeits her right to choose the jury's foreperson by either selecting a foreperson at random or allowing the jurors themselves to select their foreperson. An interventionist strategy is one in which a judge is actively attentive to the racial/ethnic composition of the jury and the potential racial biases of jurors, actively questions attorneys' uses of peremptory challenges in relation to potential minority jurors rather than relying on opposing counsel to monitor biases in jury selection, and/or attempts to choose a foreperson who "looks like" the criminal defendant, addressing the disparate impact of a lack of minority jurors on minority defendants through the pathways elaborated earlier.

As with other stages, most judges in our sample (35 of 48, 73 percent) employ noninterventionist strategies at jury selection. Many of these judges express the ideals of being "impartial" or "neutral" adjudicators during jury selection. Judges convey that it is ideal to have a diverse jury; yet, like Judge 53 who told us that achieving this ideal is "not my business," many of the judges we interviewed feel that it is not their task to ensure that jury pools, or even seated juries, are diverse. Moreover, most judges in our sample choose juries' forepersons at random or choose forepersons who appear to be attentive or whose occupations involve leadership skills. In this way, judges report that they are able to appear neutral in the eyes of counsel, as well as of the jury. Judge 83, for example, told us that his choice of forepersons does not "involve any real calculus." He usually chooses the person in seat number one—a random choice given that jurors are seated in a random order. If juror number one is "demonstrably bad," he may choose another juror but hesitates to do so:

> I'm not terribly comfortable at the idea of selecting a foreperson. One, I'm a little concerned that I would tend to select someone that looks like me or has a background like me, and I don't think that's a good thing. Another reason is that I worry that the jurors will wonder, "Ok, why did he choose that person and why not me? What's wrong with me?"

When it comes to the jury, many judges in our sample are often wary of "putting [their] finger on the scale" (Judge 73).

At the same time, jury selection is the stage at which the largest number of judges in our sample (13 of 48, 27 percent) employ interventionist strategies (table 3). Judges who employ an interventionist strategy at this stage not only aim to choose forepersons who match the racial/ethnic background of defendants but also monitor the racial composition and biases of the jury during jury selection. With respect to choosing forepersons, Judge 74 recalled that he "certainly tries to have a diverse group serve as forepersons." With respect to jury selection more broadly, this judge relayed: "[W]e have very few if any minorities being empaneled so they are put in the juror box." This judge also noted that he monitors whether peremptory challenges may be racially motivated, stating: "If there are any objections, I will instruct the clerk to document [them]. … So I'm very alert at certain times in the process for any challenges [against minority jurors]." Judge 93 echoed this sentiment, noting that "if there's a Black defendant, I would rather he have a Black juror, you know, at least one or two." Although judges with an interventionist strategy at this stage of trial are rarely able to do more than choose a minority foreperson, if one happens to be present on the jury, they can set a tone during jury selection that emphasizes the importance of diversity and the presumption that any minority juror should be seated more often than not. Often, setting such a tone involves actively reminding attorneys of the need to ask questions that bear on potential jurors' racial biases during *voir dire* (Judges 133 and 137).

POST-TRIAL SENTENCING

At post-trial sentencing, judges devise appropriate sentences for convicted defendants. At this stage, a noninterventionist strategy focuses on the information presented by prosecutors and defense attorneys and tailors a sentence to the case at hand, striving to be internally consistent in an effort to address judges' own potential differential treatment. An interventionist strategy seeks more information about the defendant and strives for external consistency by considering the case with respect to the involvement of racial/ethnic groups in the system as a whole, addressing disparate impact.

When asked whether they account for racial disparities when determining individual sentences, most judges in our sample (41 of 48, 85 percent) told us that they do not—and that they feel they cannot. There is a strong normative understanding that sentencing must be specially tailored to the particular factors and mitigating/aggravating circumstances of the case at hand. Similar to the plea stage, post-trial sentencing is complex and deliberative. Comparison between similarly situated defendants is particularly difficult at post-trial sentencing because of the great amount of information that becomes available over the course of a trial. Consequently, many judges in our sample see little way of drawing comparisons between racial groups. As Judge 92 told us, the problem of racial disparities is not part of her "decision-making" because "you have to look at each person and try to craft something that can help that person succeed."

At the sentencing stage, racial disparities that have emerged at earlier stages of criminal justice processing are already locked in. Indeed, most variation in defendants' outcomes at sentencing arises from legal factors, such as charges brought or criminal history, as judges see little leeway in righting discriminatory decisions made at earlier stages (Klepper, Nagin, and Tierney, 1983). Even when they recognize that defendants may have

been differentially treated or disparately impacted earlier in the process, some judges consider sentencing to be independent of earlier stages. Judge 69, for example, told us:

> I try to recognize when there have been a lot of times where the people before me didn't get equal treatment—not by me but somewhere along the way. [But] I'm not meant to equalize it; I just cannot get to it.

Other judges in our sample, when asked whether they consider racial disparities at sentencing, replied, almost helplessly, "If nothing else, I can strive to be consistent within myself" (Judge 82).

Like Judge 82, many judges who employ a noninterventionist strategy at this stage strive to make sure that their own particular sentencing decisions are consistent across racial groups of defendants with like-charges and like-criminal records. For example, Judge 40 told us: "All you can do in an individual case is be as fair as you can, and you very much hope that the body of your decisions together are fair." Judges also reported making express efforts to account for their personal biases. For example, Judge 86 reflected that he is certain that he has biases that affect him in "subconscious ways," but he does his "best to guard against that" only to the extent that he does not create "a kind of reverse bias" *in favor* of minority defendants. The overwhelming majority of judges interviewed expressed a desire to be internally consistent and to correct for their own biases, but they do not see other ways of addressing racial disparities at post-trial sentencing.

Judges who employ an interventionist strategy at sentencing (7 of 48, 15 percent), however, are concerned not just with being internally consistent but also with striving to account for racial disparities that emerge through disparate impact before sentencing and to incorporate these inequalities in their sentencing decisions. For example, some judges, when asked about how they deal with racial disparities at sentencing, conflated race with class and argued that minorities and low-income defendants should be disposed of more leniently than wealthy White defendants who have had more opportunities throughout their lives. Judge 137, a minority male, told us:

> There's this temptation to overvalue the class issue which shows up a lot in sentencing and other places. So why should I give the benefit of the doubt to the wealthy young man who objectively has a better chance … versus someone who never had a break in his life? Should that person get punished more severely? … In fact, in some ways, I carried the bias against the wealthy kid who, despite of all of the benefits in his life, was willing to go and hold up a store even though he didn't need the money!

Judge 54, a White female, provided a similar explanation for her interventionist approach at sentencing. For her, crimes of the same nature are qualitatively different depending on the race and background of the defendant. She relayed that she often holds a higher standard for White defendants than for Black defendants because Whites are not subject to the racial bias that Blacks are subject to. She told us: "You might see a White kid come in who has committed a crime and you think really? *Really?* You have all of the advantages that these [minorities] don't have because you're White." By accounting for the social adversities (Tonry, 1995, on the "social adversity" defense) faced

Table 4. Judges by Number of Stages at Which They Employ an Interventionist Strategy ($N = 48$)

Interventionist at 0 Stages	Interventionist at 1 Stage	Interventionist at 2 Stages	Interventionist at 3 Stages	Interventionist at 4 Stages
23	15	7	2	1

by low-income minorities prior to contact with the criminal justice system, interventionist strategies may counter the disparate impact of poverty and restricted life chances.

SITUATIONAL DECISION-MAKING: COMPARING TWO JUDGES' STRATEGIES

Central to our situational approach to decision-making is our finding that judges' many decisions each involve a specific set of considerations and that the same judge may, therefore, employ a different category of strategies at different stages of the criminal court process. Although we find that nearly half the judges in our sample (23 of 48, 48 percent) report employing noninterventionist strategies at all four stages and only one judge reports interventionist strategies at all stages, exactly half the judges in our sample report employing some mixture of interventionist and noninterventionist strategies in their decision-making (table 4).

To illustrate this within-judge variation and to examine judges' interpretations of their situational constraints in more depth, we compare the cases of two judges: Judge 97, a White male, and Judge 133, a minority male. Although both judges attribute the existence of racial disparities to differential treatment by court officials and, to some extent, to differences in offending and the disparate impact of the law, the two judges diverge markedly in their strategies for dealing with racial disparities. This comparison of one White and one minority judge, in addition, reflects a modest association in our data between a judge's race and the types of strategies he or she employs with respect to racial disparities. Although an analysis of the association between judges' strategies at different stages of trial and judges' background characteristics is beyond the scope of this article, we note that minority judges in our sample are more likely to employ interventionist strategies than are White judges.[8]

When asked whether he is aware of studies that show disparate sentencing by race, Judge 97, the White male, responded, "Oh, sure." He recounted his understanding that, particularly in the case of bail, the court system is "institutionally prejudiced." When probed further, Judge 97 characterized this prejudice as a form of differential treatment. He reflected: "I'm better than 99.95 percent of the people in the world but I'm not Jesus. I'm sure I'm a racist at heart … I'd not be surprised if somebody analyzed … my decisions … [and] teased out a pattern of racism." He noted that "racism in this country" is

8. A greater proportion of minority judges in our sample (12 of 17, 71 percent) employs an interventionist strategy with respect to at least one of the four stages of trial than the comparable proportion of White judges (13 of 31, 42 percent). Moreover, the three judges who employ interventionist strategies at three or more stages (table 4) comprise one White, one Black, and one Latino judge. This apparent relationship, however, may be a function of other social characteristics and may vary by stage of trial.

"pervasive and subtle." When asked whether he thinks about disparities when ruling on individual cases, Judge 97 bluntly responded: "What do you want me to do?" He elaborated that he tries to guard his language to avoid accidentally offending any racial/ethnic minorities who might be present in the courtroom, but he also does not "stick my thumb on the scale" in favor of minority defendants, such as by reducing a sentence he would otherwise impose just "because it's a Black woman." This reveals a noninterventionist approach to sentencing that strives for internal consistency. Additionally, Judge 97 did not recount questioning prosecutors' charging decisions or their bail requests and said that he "very rarely" rejects an agreed-on guilty plea. (However, Judge 97 did note that he works with state prosecutors to handle cases more efficiently in which "illegals" are charged with driving with a suspended license, given the technicalities of citizenship involved.) Finally, when it comes to jury selection, Judge 97 told us that he is a "very old-fashioned assimilationist." He does not find it appropriate to "split society into groups," critiquing the assumption that jurors of certain backgrounds are more or less appropriate to serve on certain cases. He notes that he does not want to ask a juror "if you're a racist because I don't assume you're a racist." Moreover, although he will do so when absolutely necessary, he expressed displeasure at the idea of questioning whether attorneys' peremptory challenges of jurors are racially biased, noting that doing so is "an astonishingly vicious attack" on the character of an attorney; he would rather avoid such "confrontations." In sum, Judge 97 does not find it appropriate to employ interventionist strategies at the four stages of trial.

Like Judge 97, Judge 133, the minority male, understands racial disparities to be caused, at least in part, by differential treatment by court officials. Although he noted that "many of us in the judicial system think we're fair and don't think there is much bias," he insisted that judges are, indeed, susceptible to bias. Judge 133 additionally noted that "lawyers treat their clients differently" and recounted specific stories of racial bias, especially against Blacks and Latinos, that he had heard over the years. When asked whether he thinks about disparities when ruling on individual cases, Judge 133 answered that he does not because he tries "to treat everybody equally." When probed further about his sentencing decisions, he said that judges share blame with defense attorneys', prosecutors', and probation officers' differential treatment of defendants throughout the court process. By the time a case reaches the sentencing stage, Judge 133 feels he can employ only a noninterventionist strategy in which he accounts for his own potential bias but not for the prior effects of others' biases. At arraignment when bail is set, however, Judge 133 reports employing an interventionist strategy. At this stage, he finds that he is able to monitor the differential treatment of lawyers: "I'm very careful to make sure the bail request is not based on an individual's race or economic status." He recounted that early in his career, he was shocked when an attorney requested a low bail amount for "some young White kid" because his "father is a respected member of the Northeast Capital City police." Judge 133 told the attorney, "I've got people that are unrelated to police officers. I'm not going to treat them differently than your client." With respect to the plea hearing, however, Judge 133 employs a noninterventionist strategy, reporting that it is rare for him to reject an agreed-on plea. He feels constrained by attorneys who decide "whether or not to plea-bargain the case" and how to "charge the defendant," and he remarks that, at the plea stage, judges just have to "deal with what's put on the table in front of us." Finally, at jury selection, Judge 133 employs an interventionist strategy. Although he chooses a foreperson based on jurors' occupational statuses and perceived

abilities to lead a group discussion, he remarked that "the big issue in Northeast State is the diversity in the jury pools." Although Judge 133 believes that the diversity of the jury pools is out of his control, he reports questioning lawyers' decision-making during empanelment to increase the odds that racist potential jurors are excluded and minority potential jurors are seated. For example, Judge 133 expressed disappointment that often "lawyers don't even think to ask the racial questions when there's a cross-racial crime." So, Judge 133 initiates the conversation: "I have to ask them, you know, what's your client's ethnicity or race and how does your client want me to describe it to the jury [pool]" when asking each potential juror whether she has any bias against people of the defendant's race/ethnicity. In sum, Judge 133 employs interventionist strategies at two of the four stages of trial we consider.

When Judges 97 and 133 are considered in relation to one another, it is apparent how judges' interpretations of their situational constraints impact their decision-making strategies in relation to racial disparities. Despite both judges' acknowledgment of court officials' differential treatment as a cause of racial disparities, Judge 97, the White male, does not find it possible or appropriate to employ interventionist strategies at any of the four stages of trial we consider, whereas Judge 133, the minority male, employs interventionist strategies at two of the four stages.

DISCUSSION

Through in-depth interviews with Northeast State judges, we uncover a range of explanations judges hold and strategies judges employ with respect to racial disparities in the criminal justice system, thereby moving "beyond official records" and toward the identification of "more subtle variables about organizational pressure and the attitudes of major participants" (Feeley, 1992 [1981]: 152). Most judges in our sample attribute racial disparities, at least in part, to some form of differential treatment by criminal justice officials. But a sizeable minority of our sample attributes racial disparities only to the disparate impact of facially neutral laws and differences in criminal offending rates. With respect to addressing the problem of racial disparities, judges in our sample employ two sets of strategies—*noninterventionist* and *interventionist*—that manifest themselves differently at different stages of the court process. Noninterventionist strategies largely allow racial disparities to go unchecked with respect to possible differential treatment by other actors and with respect to the disparate impact of the criminal justice system, whereas interventionist strategies attempt to address these processes. We argue that the noninterventionist decision-making of most judges in our sample at each stage of trial (table 3) helps to explain the persistence of racial disparities in the criminal justice system despite well-intentioned judging.

A few limitations to this article should be noted. First, as our data are not necessarily fully representative of Northeast State Court, we cannot reliably document the prevalence of the explanations or strategies we find with respect to the state's full population of judges. But, as noted, representativeness was not our goal; rather, we sought to sample a diverse range of judges until we reached saturation on the interpretations recounted by our respondents. Second, given space constraints, this article does not offer an explanation of how judges' varying understandings emerge, nor does this article attend in depth to the interactions and relationships between court officials. We plan to consider both areas of inquiry in future work that will draw from this study's data. Third, we

observe neither the frequencies of our respondents' use of their reported strategies nor the ultimate impacts of these strategies on criminal defendants. Future research should investigate these relationships through a research design that couples ethnographic or survey data with administrative court data. The use of vignettes could facilitate comparison across judges. Finally, as judges in Northeast State are appointed and typically serve until they reach the mandatory retirement age, our findings may not hold in jurisdictions where judges are elected and therefore face an additional set of considerations when making decisions. We would hypothesize that the applicability of our findings would vary depending on the political environments in which judges are embedded, among other factors. This is another important area for future inquiry.

These limitations aside, our findings have implications for the persistence of racial disparities in the criminal justice system and for sociological interpretations of decision-making in organizational contexts. Extant research on judges has tended to rely on their implicit or explicit racial biases or attributions to explain the persistence of racial disparities (Albonetti, 1991; Rachlinksi et al., 2009; Steffensmeier, Ulmer, and Kramer, 1998). Our findings, however, reveal that even when judges are not explicitly racist and even when they acknowledge, and attempt to account for, their implicit biases, they still may unintentionally contribute to racial disparities through noninterventionist decision-making that does not account for potential differential treatment by other actors or for the disparate impact of poverty and facially neutral laws, such as mandatory sentencing minimums (Travis, Western, and Redburn, 2014) or the cumulatively disadvantaging effects of defendants' prior criminal records (Spohn, 2000). Moreover, we reveal that some judges' decisions to provide lenient dispositions to criminal defendants—particularly in the case of drug crimes—may contribute to racial disparities by affording well-off, often White, defendants opportunities for alternative treatment that are unavailable to poor, often Black, defendants. In this way, absent differential treatment on the basis of race, judges' decisions can still perpetuate racial disparities through their disparate impact. (For example, many Northeast State judges would presumably afford Black defendants similar opportunities for alternative treatment if they perceived they were able to afford it.)

As we document, judges can employ interventionist strategies to combat differential treatment by other court officials (at arraignment, agreed-on plea hearings, jury selection, and post-trial sentencing), as well as the disparate impact of the criminal justice system (at jury selection and post-trial sentencing). The extent to which judges report employing interventionist strategies relates to what judges perceive to be appropriate conduct or within the confines of their role. More judges in our sample employ interventionist strategies at arraignment and during jury selection than at the plea stage or post-trial sentencing. Judges may find interventionist strategies to be less appropriate at the latter two stages because these stages are highly visible in the criminal justice process. Moreover, rejecting an agreed-on plea requires a judge to contest the collective decision-making of a prosecutor *and* defense attorney whose agreement keeps the court system moving.

These findings extend contemporary theoretical perspectives on the reproduction of racial inequality in the United States. Contemporary understandings of racism suggest that racial inequality is reproduced in subtle, contextually specific ways (Bobo, Kluegel, and Smith, 1997; Clair and Denis, 2015). We contribute to these understandings of racism by showing how racial inequality in the courts can be reproduced by a lack of engagement in countering disparity-producing legal practices, policies, and decisions (Pager and

Shepherd, 2008). As we have shown, a recognition of implicit bias alone is likely insufficient for countering American racial inequality.

Our findings should inform legal scholarship and normative political debates about racial inequality. With respect to American jurisprudence, in particular, court officials and other political and legal actors should continue to debate when and how the disparate impact of poverty, segregation, and discrimination prior to contact with the criminal justice system should be considered in decision-making within the system (Delgado, 1985). More broadly, everyday social actors should consider how and under what conditions accounting for personal bias alone is or is not sufficient for countering disparity-producing social processes.

This article's situational approach to decision-making allows researchers to trace the implications for criminal defendants of the myriad decisions made by court officials and other organizational actors. Largely reliant on administrative court data, extant studies seeking to explain how court officials might contribute to racial disparities have been limited by the variables that have been recorded in state and federal records (Spohn, 2009: 115). Some studies have considered whether judges with certain social characteristics treat Blacks and Latinos more punitively than others, but the findings have been inconclusive (Spohn, 2009; Ulmer, 2012). Such research has assumed that certain characteristics of a judge have consistent influences on a judge's behavior. However, we have shown that each judge holds multiple understandings that constitute stage-specific strategies that are employed at each stage of criminal proceedings, given the social constraints and opportunities present. Although many judges in our sample consistently employ only noninterventionist strategies, most judges are not wholly one way or another; instead, their beliefs vary between situations and are expressed differently in response to specific problems (Grossman, 1965). Therefore, researchers should focus analytic attention on the situationally specific social processes of decision-making, in addition to the social characteristics of the actors making decisions. Although recent qualitative work (Harris, 2008: 492–5) has extended theories of local courtroom norms in explaining between-judge differences in decision-making (Eisenstein and Jacob, 1977), situational decision-making illuminates variation within, not just between (Abrams, Bertrand, and Mullainathan, 2012), judges.

Future research on judicial decision-making in state courts should further explore to what extent judges' multiple decisions are influenced by situational constraints with respect to other social problems, such as gender disparities or defendants' mental health statuses. Similarly, future research on the criminal justice system more broadly should consider how situational processes at particular stages of criminal justice processing constrain the decision-making of various actors, from police officers to probation officers. As Klepper, Nagin, and Tierney (1983: 56) noted, knowledge of "the important decision criteria of each of the major actors and their interaction is required" to prevent model misspecification in quantitative analyses of court data. Finally, our situational approach can be applied to other organizational contexts in which actors make strings of decisions that impact people's social statuses (Hasenfeld, 1972), such as schools, workplaces, hospitals, and governmental agencies. By tracing how situation-specific decisions are structured by broader social and cultural processes, researchers can identify particular, modifiable instances in which actors contribute to disparity-producing processes.

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